



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

CCO/170158

PRELIMINARY RECITALS

Pursuant to a petition filed November 14, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to Child Care (CC) benefits, a hearing was held on December 9, 2015, by telephone.

The issue for determination is whether the petitioner was overpaid CC benefits from June through September 2015.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [Redacted] ESS
La Crosse County Department of Human Services
300 N. 4th Street
PO Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [Redacted]) is a resident of La Crosse County.
2. The petitioner gave birth in April 2015, creating a household of two persons. She filed an online application for FoodShare and CC on April 8, 2015, and was correctly opened for both programs.

At the time of application, the parties believed that the petitioner would receive zero short-term disability pay for June.

3. On April 22, 2015, the Department mailed eligibility notices to the petitioner, showing (1) that it believed her income would be zero for June, and (2) that she qualified for CC benefits.
4. On April 23, 2015, the petitioner reported to the Department that she was returning to work. Shortly thereafter, the Department verified a job return date of May 18, 2015 and the resulting income. However, the Department worker failed to enter the income in the petitioner's case, leaving her income at zero.
5. The petitioner's child was in daycare from at least June through September 2015. During the June through September period, the Department paid out \$2,806.30 in CC benefits to her daycare.
6. After realizing its error, the Department determined that the petitioner's income level made her ineligible for some of the CC benefits issued.
7. The petitioner's gross income from employer [REDACTED] is not in dispute. She grossed \$2,158.76 in June, \$2,701.88 in July, and \$2,028.13 in August, 2015.
8. On November 10, 2015, the Department issued a *CC Overpayment Notice* (claim # [REDACTED]) and a worksheet to the petitioner. That *Notice* advised that she had been overpaid \$942.00 in CC for the months of June through September, 2015.

DISCUSSION

I. JURISDICTION.

All child care funding distribution falls under the aegis of the Wisconsin Works (W-2) program, regardless of whether or not the applicant is actually a participant in W-2 activities. Wis. Stat § 49.155(1m). Prior to January 1, 2004, any parent desiring to contest child care assistance overpayments was required to request a fact-finding review from the issuing W-2 agency. Effective November 24, 2003, the Department of Workforce Development changed the process to provide recipients of such assistance a fair hearing from the Division of Hearings & Appeals. See, *DWD Operations Memo*, #03-66. See also, Wis Stat §49.195(3), § 49.152(2), & § 227.42, *et. Seq.*, *Child Care Manual*, § 2.1.5.

II. THE PETITIONER MUST REPAY A CC OVERPAYMENT, WITHOUT REGARD TO WHO WAS AT FAULT IN CREATING THE OVERPAYMENT.

The petitioner asserts that she reported her job and income to the agency, and that the overpayment was not her fault. However, the applicable overpayment rule requires recovery of the overpayment, regardless of fault:

DCF 101.23 Recovery of overpayments. (1) DEFINITIONS. In this section:

...

(g) "Overpayment" or "debt" means any benefit or payment received under s.49.148, 49.155, 49.157, or 49.19, Stats., in an amount greater than the amount that the individual, AFDC assistance group, or W-2 group was eligible to receive under applicable statutes and rules, regardless of the reason for the overpayment. An overpayment may be result of client error, administrative error, or intentional program violation.

...

(3) LIABILITY. (a) Liability shall extend to any parent, non-marital coparent, or stepparent whose family receives benefits under s.49.148, 49.155, 49.157 or 49.19, Stats.,

during the period that he or she is an adult member of the same household, but his or her liability is limited to such period. ...

Wis. Admin. Code §DCF 101.23(1)(g), (3)(a). See in accord, *Child Day Care Manual*, §2.1.5. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the petitioner. This provision may be viewed online by the petitioner at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm>.

III. THE PETITIONER WAS INELIGIBLE FOR A PORTION OF THE CC PAYMENTS FOR JUNE THROUGH SEPTEMBER, 2015, DUE TO EXCESS INCOME.

The petitioner was overpaid CC for June through September, 2015, because she ended up getting more benefits than she was supposed to receive. For an ongoing CC household, the gross income limit is set at 200% of the federal poverty level. *Child Day Care Manual*, §2.3.2.

The petitioner did not question the accuracy of the gross income figures used. She was unhappy about the overpayment recovery, because she had timely reported her return to work. As noted above, state code requires this recovery. Thus, the agency must attempt recovery of that overpayment.

CONCLUSIONS OF LAW

1. The Department correctly determined that the petitioner was overpaid \$942.00 for the June 1 through September 30, 2015, period, due to agency error.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 31st day of December, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin \DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 4, 2016.

La Crosse County Department of Human Services
Public Assistance Collection Unit
Child Care Fraud